

SENATE BILL REPORT

SB 5099

As Reported by Senate Committee On:
Law & Justice, February 14, 2017

Title: An act relating to crimes against vulnerable persons.

Brief Description: Concerning crimes against vulnerable persons.

Sponsors: Senators Bailey, Frockt, O'Ban, Pedersen, Darneille, Keiser and Kuderer; by request of Attorney General.

Brief History:

Committee Activity: Law & Justice: 2/01/17, 2/14/17 [DPS-WM].

Brief Summary of Substitute Bill

- Lowers culpability for criminal mistreatment in the first and second degrees from reckless to criminal negligence.
- Defines criminal mistreatment and theft from vulnerable adults as crimes against persons.
- Creates first and second degree theft from a vulnerable adult.
- Provides a six year statute of limitations for theft from a vulnerable adult.
- Encourages counties to develop vulnerable adult advocacy teams to develop protocols for criminal cases involving vulnerable adults.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5099 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Aldo Melchiori (786-7439)

Background: There are four degrees of criminal mistreatment differentiated by the behavior of a person who is a parent of a child, the person entrusted with the physical custody of a

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child or dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or dependent person the basic necessities of life. The person is guilty of:

1. Criminal mistreatment in the first degree if the recklessly causes great bodily harm to a child or dependent person by withholding any of the basic necessities of life. Criminal mistreatment in the first degree is a Class B felony ranked at Level X on the sentencing grid—standard range of 51-68 months of incarceration for a first offense and/or up to a \$20,000 fine.
2. Criminal mistreatment in the second degree if the person recklessly either: (a) creates an imminent and substantial risk of death or great bodily harm; or (b) causes substantial bodily harm by withholding any of the basic necessities of life. Criminal mistreatment in the second degree is a Class C felony ranked at Level V on the sentencing grid—standard range of 6-12 months in jail for a first offense and/or up to a \$10,000 fine.
3. Criminal mistreatment in the third degree if the person either: (a) with criminal negligence, creates an imminent and substantial risk of substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life; or (b) with criminal negligence, causes substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life. Criminal mistreatment in the third degree is a gross misdemeanor punishable by up to 364 days in jail and/or up to a \$5,000 fine.
4. Criminal mistreatment in the fourth degree if the person either: (a) with criminal negligence, creates an imminent and substantial risk of bodily injury to a child or dependent person by withholding any of the basic necessities of life; or (b) with criminal negligence, causes bodily injury or extreme emotional distress manifested by more than transient physical symptoms to a child or dependent person by withholding the basic necessities of life. Criminal mistreatment in the fourth degree is a misdemeanor entitling the offender to up to 90 days in jail and/or up to a \$1,000 fine.

Generally, a prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question, or would result in decreased respect for the law. Crimes against persons, however, must be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact finder.

Great bodily harm means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any body part or organ. Substantial bodily harm means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any body part or organ, or which causes a fracture of any body part.

A person is reckless or acts recklessly when they know of and disregard a substantial risk that a wrongful act may occur and their disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation. A person is criminally negligent or acts with criminal negligence when they fail to be aware of a

substantial risk that a wrongful act may occur and their failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

Summary of Bill (First Substitute): The mental state required for criminal mistreatment in the first and second degrees is lowered from criminal recklessness to criminal negligence. It is criminal mistreatment in the second degree if the person negligently creates an imminent and substantial risk of death or great bodily harm by withholding any of the basic necessities of life. It is criminal mistreatment in the second degree, rather than in the third degree, if the person negligently causes substantial bodily harm by withholding any of the basic necessities of life.

Two new crimes are created. Theft from a vulnerable adult in the first degree is committed if the person unlawfully takes property or services that exceed \$5,000 in value, other than a firearm, from a vulnerable adult. Theft from a vulnerable adult in the first degree is a Class B felony ranked at Level VI on the sentencing grid—standard range of 12-14 months of incarceration for a first offense and/or up to a \$20,000 fine. A person is guilty of theft from a vulnerable adult in the second degree if he or she commits theft of property or services that exceeds \$750 in value but does not exceed \$5,000 in value, other than a firearm or a motor vehicle, of a vulnerable adult. Theft from a vulnerable adult in the second degree is a Class C felony ranked at Level I on the sentencing grid—standard range of 0-60 days in jail for a first offense and/or up to a \$10,000 fine. For either offense, the defendant must have known or should have known that the victim was a vulnerable adult.

For the purposes of the new crimes, vulnerable adult includes a person 18 years of age or older who has the functional, mental, or physical inability to care for himself or herself; or is suffering from a cognitive impairment other than voluntary intoxication. The statute of limitations for theft from a vulnerable adult is six years after commission or discovery.

Criminal mistreatment in the first and second degrees and theft from a vulnerable adult in the first and second degrees are defined as crimes against persons. The prosecuting attorney must file charges if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact finder. This also creates additional consequences for persons convicted such as an increased time of community custody and restriction from access to vulnerable adults in facilities licensed to provide care and treatment to vulnerable adults.

A "vulnerable adult advocacy team" is a team of three or more persons who coordinate a multidisciplinary process for preventing, identifying, investigating, prosecuting, and providing services related to abuse, neglect, or financial exploitation of vulnerable adults. Members of a vulnerable adult advocacy team must disclose to each other confidential or sensitive information and records, if the team member disclosing the information or records reasonably believes the disclosure is relevant to the duties of the team. The disclosure and receipt of confidential information between team members is governed by the county protocol. Prior to participation, each team member must sign a confidentiality agreement that requires compliance with all governing federal and state confidentiality laws.

The information or records obtained by the team must be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights. Information and records communicated or provided to vulnerably adult advocacy team members, as well as information and records created in the course of an investigation, shall be deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law protections. The disclosed information may not be further disclosed except by law or by court order.

Each county is encouraged to develop a written protocol for handling criminal cases involving vulnerable adults. The protocol must:

- address the coordination of vulnerable adult mistreatment investigations among the entities involved in the criminal investigation of vulnerable adult mistreatment;
- be developed by the prosecuting attorney with the assistance of the identified agencies;
- provide that participation as a member of the vulnerable adult advocacy team is voluntary;
- include a brief statement provided by the state long-term care ombuds, without alteration, that describes the confidentiality laws and policies governing the state long-term care ombuds program, and includes citations to relevant federal and state laws;
- require the development and use of a confidentiality agreement that includes, but is not limited to, terms governing the type of information that must be shared, and the means by which it is shared; the existing confidentiality obligations of team members; and the circumstances under which team members may disclose information outside of the team; and
- require the vulnerable adult advocacy team to make a good faith effort to obtain the participation of the state long-term care ombuds prior to addressing any issue related to abuse, neglect, or financial exploitation of a vulnerable adult residing in a long-term care facility during the relevant time period.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Clarifies that a vulnerable adult may not consent to the release of confidential information provided to an advocacy team.
- Provides that the information can only be disclosed by law or by a court order.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: If you have ever seen a vulnerable adult who has been exploited, it is difficult to forget. There is nothing worse than taking

advantage of vulnerable adults or children. Many of us will need care someday, so this effects us all. This is a serious and rapidly growing problem in Washington. A long statute of limitations is needed because it often takes years for financial abuse to be discovered. Washington is only one of thirteen states that do not have these specialized crimes. There has been a 70 percent increase in complaints in the last five years. The change from criminal reckless to criminal negligence is needed because juries think of recklessness as an affirmative act rather than a failure to act. A guardianship could be in your future and some guardians use their position to exploit people.

Persons Testifying: PRO: Senator Bailey, Prime Sponsor; Bea Rector, DSHS; Lana Weinmann, Office of the Attorney General; Page Ulrey, WAPA, King County prosecutor's Office; Jennifer Roach, Supporting Seniors; Claudia Donnelly; Joanna Grist, AARP.

Persons Signed In To Testify But Not Testifying: No one.